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**Joann R. Huss-Phillips
81 Chesterfield Drive
Noblesville, Indiana 46060**

February 14, 2000

U.S. Department of Health and Human Services Secretary for Planning and Evaluation
Attn: Privacy-P
Room G322A, Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

Re: Proposed Medical Privacy Regulations - Federal Register, November 3, 1999

Dear Assistant Secretary:

I have read, among other commentaries, a recent letter sent to you by Congressman Ron Paul. Since I am a working mother, my time has an extremely high price. So, I feel that I should not have to go into another paper to have my comments taken seriously (I attach Congressman Paul's letter and his comments are to be considered as being personally repeated verbatim by me).

The reasons proposed for such regulations raise questions for which there are no satisfactory answers. Any proposed good assigned to these regulations is greatly outweighed by the many dangers to maintaining our free society. Or, a more appropriate question to ask might be: Is defending and protecting our free society what the government is really all about anymore? The balance of powers between the three branches has been eroding, and there is little redress for citizens in the face of presidential orders.

Are we really to believe that having our medical records on a national database is an effort to secure privacy? No matter how much rhetoric is given to limits and safeguards, there is no way that a thinking citizen who truly values individual freedom can view such regulations as "secure" or "private."

In sum, I consider these proposed medical privacy regulations anything but a matter of "privacy protection." Besides Congressman Ron Paul pointing out that these proposed regulations violate the Fourth and Fifth Amendments, there is concern as to just how and by whom the medical information will ultimately be used. As a citizen of the United States and a native of this land by blood to the Lenni Lenape or Delaware and to the Puritans who came to Maryland in 1630 (among these Puritan ancestors was Nathan Hale, no? to mention many other prestigious leaders who fought for and continue to fight for our freedom), I wish to voice my strong opposition to these proposed regulations.

Very truly yours,


Joann R. Huss-Phillips

JRP/jrp

cc: Senator Richard Lugar
Senator Birch Bayh
Representative Dan Burton

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LETTER TO HHS FROM CONGRESSMAN RON PAUL

The following letter was written by Congressman Ron Paul to the U.S. Department of Health and Human Services as his response to their proposed medical privacy regulations:

Congress of the United States
House of Representatives
Washington, DC 20515

Ron Paul
14th District of Texas

December 9, 1999

U.S. Department of Health and Human Services Assistant Secretary for Planning and Evaluation,
Attention: Privacy-P,
Room G322A, Hubert H. Humphrey Building,
200 Independence Avenue SW,
Washington, DC 20201

Dear Assistant Secretary:

I wish to convey my displeasure with the Department of Health and Human Services' (HHS) proposed **medical privacy** regulations which were published in the **Federal Register** on November 3, 1999. Protecting medical privacy is a noble goal, however, the federal government is not constitutionally authorized to mandate a uniform standard of privacy protections for every citizen in the nation. Rather, the question of who should have access to a person's medical records should be determined by private contracts between that person and their health care provider.

Unfortunately, government policies encouraging citizens to rely on third-party **payors** for even routine **health** care expenses has undermined the individual's ability to control any aspect of their own health care, including questions regarding access to their medical records. **All too often**, third-party **payors** use their control **over** the health care dollar to gain access to even the most personal details of **an** individual's health care, using the justification that because they are paying for the treatments they must have access to the patient's medical records to protect against fraud or other malfeasance. Because most of the concerns about medical privacy are rooted in the loss of individual control over the **health** care dollar, the solution to the loss of medical privacy is to empower the individual by giving **them** back control **of their health care** dollar. The best way to do this is through means such as Medical Savings Accounts and individual tax credits for **health** care. When the individual has control over their health care dollar, they can control all aspects of their health care—including who should have access to their medical records.

Rather than support efforts to place the individual back in control of health care, this administration has consistently pursued an agenda **that** would enhance the power of the federal government **over** health care. HHS' proposed medical privacy regulations continue in that sad tradition. In the name of protecting privacy, HHS has reduced the individual's control **over** their medical records. **HHS' proposal, if enacted**, would deny, as a matter of federal law, individuals the **ability** to contract with the providers or **payors** to establish limitations on who should have access to their medical records. Instead, every American will be forced to accept the privacy standard decided upon by Washington-based bureaucrats and politicians. Individual citizens would not only have to accept the privacy standards dictated to them by Washington bureaucrats, they would even be deprived the ability to hold those who violated their privacy accountable in a **court of law**. Instead, the regulations give the Federal Government the power to punish those who violate these federal standards. Thus, in a remarkable example of government paternalism, individuals are forced to rely on the good graces of government bureaucrats for protection **of their** medical privacy. These regulations also create yet another unconstitutional federal crime, at a time when voices from across the **political** spectrum are decrying the nationalization of law enforcement.

These so-called "privacy protection" regulations not only strip individuals of any ability to determine for themselves how best to protect their medical privacy, they also create a privileged class of people with a federally-guaranteed right to see an individual's medical records without the individual's consent. For example, medical researchers may access a person's private medical records **even** if an individual does not want their private records used for medical research. Although individuals **will** be told that their identity **will** be protected the fact is that no system is fail-safe. I am aware of at least one incident where a man had his medical records used without his consent and the records inadvertently revealed his identity. As a result, many people in his community discovered details of his **medical history** **that** he wished to keep private!

Forcing individuals to divulge medical information without their consent also runs afoul of the Fifth Amendment's prohibition on taking private property for public use without just compensation. After all, people do have a legitimate property interest in their private information; therefore restrictions on **an** individual's ability to control the dissemination of their private information represents a massive regulatory taking. The takings clause is designed to prevent this type of sacrifice of individual property rights for the "greater good."

In a free society such as the one envisioned by those who **drafted** the Constitution, the federal government should never force a citizen to divulge personal **information** to advance "important social goals." Rather, it should be up to the individuals, not the government, **to** determine what social **goals** are important enough to warrant allowing others access to their personal property, including their personal information.

To the extent these regulations sacrifice individual rights in the name of bureaucratically-determined "common good," they are incompatible with a free society and a constitutional government.

In addition to the general constitutional and philosophic objections, I also have a number of specific concerns with the details of the proposal. **My primary objection is that the regulations allow law enforcement and other government officials access to a citizen's private medical record without having to obtain a search warrant.**

Allowing law enforcement officials to access a private person's medical records without a warrant is a violation of the Fourth Amendment to the United States Constitution, which protects American citizens from warrantless searches by government officials. The requirement that law enforcement officials obtain a warrant from a judge before searching private documents is one of the fundamental protections against abuse of the government's power to seize an individual's private documents. While the Fourth Amendment has been interpreted to allow warrantless searches in emergency situations, it is hard to conceive of a situation where law enforcement officials would be unable to obtain a warrant before electronic medical records would be destroyed.

The proposal's requirement that law enforcement officials submit a written request to review a citizen's medical file to doctors, hospitals and insurance companies before they can access private medical records is a poor substitute for a judicially-issued warrant. Private citizens are more likely to want to cooperate with law enforcement officials than are members of the judiciary, if for no other reason than because hospital administrators, insurance company personnel, and health care providers will lack the time and expertise to properly determine if a government officials' request is legitimate. Furthermore, private citizens are more likely to succumb to pressure to "do their civic duty" and cooperate with law enforcement – no matter how unjustified the request – than members of the judiciary.

Finally, I object to the fact that these proposed regulations permit health care providers to give medical records to the government for inclusion in a federal health care data system. Such a system would contain all citizen's personal health care information. History shows that when the government collects this type of personal information the inevitable result is the abuse of citizens' privacy and liberty by unscrupulous government officials. The only fail-safe privacy protection is for the government not to collect and store this type of personal information.

The collection and storing of personal medical information authorized by these regulations may also revive an effort to establish a unique health identifier for all Americans. As you are aware, a moratorium on funds for developing such an identifier was included in the HHS budget for fiscal years 1998 and 1999. This was because of a massive public outcry against having one's medical records easily accessible to anyone who knows their unique health identifier. The American people do not want their health information recorded on a database and they do not wish to be assigned a unique health identifier. The Department of Health and Human Services should heed the wishes of the American people and make sure these privacy regulations do not become a backdoor means of numbering each American and recording their information in a massive health care database.

As an OB-GYN with more than 30 years experience in private practice, I am very concerned by the threat to good medical practice posed by these regulations. The confidential physician-patient relationship is the basis of good health care; oftentimes effective treatment depends on patients' ability to place absolute trust in his or her doctors. The legal system has acknowledged the importance of maintaining physician-patient confidentiality by granting physicians a privilege not to divulge information confided to them by their patients.

Before implementing these rules, HHS should consider what will happen to that trust between patients and physicians when patients know that any and all information given their doctor may be placed in a government database or seen by medical researchers or handed over to government agents without a warrant?

Questions of who should or should not have access to one's medical privacy are best settled via contract between a patient and a provider. However, the government-insurance company complex that governs today's health care industry has deprived the individual patients of control over their health care records, as well as over numerous other aspects of their health care. Rather than put the individual back in charge of his or her medical records, the Department of Health and Human Services proposed privacy regulations give the federal government the authority to decide who will have access to individual medical records. These regulations thus reduce individuals' ability to protect their own medical privacy.

These regulations violate the fundamental principles of a free society by placing the perceived societal need to advance medical research over the individuals right to privacy. They also violate the Fourth and Fifth Amendments by allowing law enforcement officials and government-favored special interests to seize medical records without an individual's consent or a warrant and could facilitate the creation of a federal database containing the health care data of every American citizen. These developments could undermine the doctor-patient relationship and thus worsen the health care of millions of Americans.

In conclusion, I respectfully request that the Department of Health and Human Services withdraw this proposal and instead put its efforts behind meaningful measures to place patients back in control of the health care system so that individuals could once again determine who should and should not have access to their private medical records.

Sincerely,

Ron Paul

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